

## **Consilium 73**

Regarding the fifth title of the first book, Last Quaestio

### **Argument**

When the plague secretly and stealthily began to spread in Naples, Tonnus or Antonius took a very beautiful woman, by name Jomma or Hieronyma, as his wife; on the day after the consummation of the marriage, he was struck down by the plague and died. Aniellus, a kinsman of his, was living with them in the same house. He had pursued Hieronyma, (who had married Antonius unwillingly because of him), for a long time because of their mutual love. After Antonius died, he immediately had intercourse with her, and after some time obtained a dispensation from the Pope in Rome and married her. Therefore, when Hieronyma bore a son, after more than two hundred and seventy three days had passed from her first sexual intercourse with Antonius and two hundred and sixty eight from her second sexual intercourse with Aniellus, there is doubt as to whose son he truly is, whether the son of Antonius or of Aniellus. At the request of a close colleague, a jurist, I have tried to assuage this doubt as follows.

### **Summary**

1. Poor health impedes coitus and procreation.
2. It must be presumed that a son is born from a healthy man, rather than from a man in poor health.
3. Age is measured not by number of years, but by bodily strength.
4. A son ought to be thought of as begotten from a younger rather than an older man.
5. A cold and moist nature is less suited to procreation, as opposed to a hot and moist nature.

6. Love between spouses makes conception easier, while, on the contrary, hatred impedes procreation.
7. Males are created from hotter semen, females from colder semen.
8. Love between spouses should be mutual and reciprocal so that conception may follow more easily.
9. The appearance of blood a few days after intercourse ought to be considered as significant evidence of conception,.
10. Females are born later than males.
11. Stronger foetuses are accustomed to hasten the birth.
12. Seven month babies hasten their birth into the seventh month because of their strength.
13. Women usually give birth at the same time as they are accustomed to menstruate.

That this question may be decided according to the truth, certain things should be noted as facts, both out of consideration for each husband and out of respect for the wife and the child born to her. Certainly, before all else, it should be noted that Antonius, the first husband, was more than forty years old, and Aniellus, the second husband, had reached the age of thirty. In addition, Antonius had spent his life in poor health, Aniellus enjoyed excellent health and had a hearty constitution. Furthermore, Antonius was exceptionally fat, had a poor complexion and very soft flesh, Aniellus, on the contrary, was of moderate weight, with a ruddy complexion and firm flesh.

Likewise it should be noted that both men were captivated by love for Jomma, and that, when Antonius had taken Hieronyma as his wife, because of the love with which he

honoured her, he was content with a modest dowry, since he could have married another maiden much better dowered. It is agreed, in addition, that Hieronyma married Antonius against her will and had always held him in aversion, since not even after the dispensation, could she ever withdraw from the love with which she honoured Aniellus, as can be argued from her very precipitate sexual intercourse with Aniellus.

Finally, it must be noted that the little boy whom she bore was lively, robust and well formed, as much as his tender age allowed, and although he bore a similarity to neither husband, but rather resembled his mother, yet in size and liveliness he was like Aniellus rather than Antonius.

Furthermore, it is agreed that Hieronyma had been known by Antonius for the first time on the very night of the matrimonial consummation, when she thought her accustomed menstrual discharge was flowing four or five days before the usual time, whence it is thought that the blood was not menstrual blood, but occurred because of the violence she endured when she lost her virginity: for it did not continue, as was usual for her, for three consecutive days; but nevertheless she persuaded herself that her menstrual discharge had been suppressed because of her grief and anguish of spirit, as she testified when questioned. Moreover, after she presented herself to Aniellus to be used for a second time, her blood flowed in moderate quantity: however, five or six days separated her first sexual act with Antonius and her second with Aniellus. Eventually, as if at the time of a new menstruation, on the twenty seventh day from her intercourse with Aniellus, some spots of blood appeared to Hieronyma, and from these she recognized she was pregnant.

Once all these details which are considered to be facts have been examined, it seems, at first glance, one must state that the offspring she bore was fathered by Antonius, not Aniellus. First, because Antonius, on account of his excessive love for Hieronyma, had taken her as his wife; moreover, it is known how greatly love for a spouse leads to the procreation of children, as we will submit below, Second, because, from the intercourse of Antonius with Hieronyma, her menstrual discharges were straightway suppressed, even though the time of her flux was already fast approaching, indeed had already begun to flow: no other sign may rightly be regarded as clearer than this one; for by this one sign women recognize that they are pregnant, and they do not readily believe, when their monthly flows appear in some form, that they have conceived; indeed, even when the flows do not appear in great quantity, they consider pregnancy to be doubtful.

But, as greatly as what has been noted in respect to Antonius argues against him, that is to say that his son was not conceived from him, so just as significantly what has been noted in respect to Aniellus and Hieronyma and the boy born to her argues in support of Aniellus, leaving no doubt that the child was conceived from Aniellus, not Antonius.

## 1-2

In the first place, it is certain that ill health in a man poses a considerable impediment not only to procreation, but even to coitus; an argument which is very convincing to doctors, one which they make, and which I have mentioned elsewhere, *lib. 1. Quaest. medic. leg. tit. 5, q. ult. n. 2, and following, and also lib. 3. tit. 1. quaest. 4. n. 6*, where I

set out some authorities for jurists, which they can easily discover in their own libraries; among them I included *Surd. decis. 83. num. 3, and following*. Therefore, since Antonius did not enjoy vigorous health, but rather was such a valetudinarian that his friends many times had discouraged him from taking a wife, and on the contrary Aniellus enjoyed excellent health, the child should be presumed to be that of Aniellus with his greater health, rather than of the sickly Antonius.

3. Likewise, it seems that we should also form a similar opinion on the grounds of age, for although Antonius had not yet completed forty years, yet it cannot be doubted that he was less fit for coitus and procreation because of his weight of years, not much less fit, certainly than Aniellus himself, if we look at the number of years, but age is not measured by number of years, but by bodily strength, and men should be called old or young based not on the number of their years, but on their robustness and vigour, and considered more or less fit for procreation as a result; and Antonius was an invalid, weak and feeble; Aniellus, on the contrary, healthy and with a robust strength and powerful vitality, prompts a much stronger presumption in favour of Aniellus over Antonius, just as there is a strong presumption in favour of a young man over an old man.

4. Nor is it grounds for objection that old men and invalids practise coitus and ejaculate semen and sometimes even procreate, because, in spite of these arguments, in a contest between an old man and young man, a son must always be presumed to be sired by a younger rather than an older man, as everyone knows: *Surdus decisione 83*.

*numero decimo octavo.* And the reason is drawn from the very nature of the act, since old men, as so often happens also with invalids, produce watery, underdeveloped, thin, unstable semen, which cannot easily adhere to the uterus, and so is ineffective in the procreation of children: it is the opposite with the semen of young men, which is swollen with abundant life and is heavy and dense and easily clings to the uterus, so that conception easily follows; but if some old men now and then beget children, this certainly happens only for those who are very robust and who ought to be counted among the young men because of their strength, something which can in no way be said of Antonius.

5. Moreover, when Antonius' appearance, from which one can also discern the constitution of the body, is taken into consideration, it is clear that he was of a very frigid and moist temperament; natures such as this are less capable of procreation, since they generate immoderately cold semen: as a result such natures are less suited for procreation: *Galen, in libro quinto Aphorism. 63*, and especially when, as happens, their testes share the same temperature: *Galen, Art. Medic. capit. quadragesimo octavo, Avic. 20. Sen. libro tertio, capit. septimo, tractat. 1.* But, just as the constitution of Aniellus is excellent in respect to fecundity, because his nature is hot and moderate in moisture, so the constitution of Antonius is diminished in fertility.

6. If, likewise, we weigh the evidence which we said ought to be considered in respect to Hieronyma, we will readily pronounce that she would only have been able to conceive with difficulty from Antonius, since she married him against her will and regarded him

with hatred, although, when compelled, she consummated her marriage with him: moreover, it has been sufficiently argued that hatred between spouses is an impediment to procreation, and I noted elsewhere, *libro primo. Quaestion. Medico-legal. titulo quinto, quaestione ultim. numero decimo*, just as love between spouses contrives to bring about conception, so hatred usually prevents it. Therefore, if Hieronyma was estranged from Antonius and regarded him with hatred because he prevented her from entering into a marriage with Aniellus, whom she loved very much, (since her parents wanted to bestow her on Antonius as he was the wealthier man), it is certain she would not have been able to conceive easily from Antonius, but very easily from Aniellus.

7. Finally, if we consider the condition and quality of the child Hieronyma bore, it will be difficult to state that she had conceived from Antonius, considering his very feeble nature and cold temperament; for these reasons, it does not seem that he could have fathered such a well formed and robust offspring, certainly not a male child, for to achieve this requires excellent semen, hot and swollen with much life force, a kind of semen which we cannot conjecture Antonius in any way to have been able to generate: for it is agreed that males are born from hotter, more robust and more vigorous semen, females from colder, weaker, less vigorous semen, as Hippocrates *libr. de Gener. numero septimo* said truly, both man and woman produce semen, which is without doubt both masculine and feminine; and from that part of both masculine and feminine semen which is masculine, males are generated, and from that part which is feminine, females are generated, hot and strong semen for a male, for a female colder and weaker semen. Now it must be agreed that that Antonius had semen which was less

robust, too cold and less full of life force, and on this account it was more suited to begetting female rather than male offspring; Aniellus, on the contrary, was swollen with stronger, more masculine and hotter semen, the kind from which it is certain only males are generated; if we add to this the fervent love which Aniellus had for Hieronyma, what further do we need to ask in order to confirm whose offspring she bore?

And yet statements were made previously to the contrary, which it seems could be set in opposition to this conclusion: in the first place, [it was noted] that Antonius took Hieronyma as his wife goaded by the spur of a most fervent love, and thus no less, indeed much more, it may be supposed that the offspring she bore was his progeny, not that of Aniellus, since Antonius first consummated marriage with her at the most propitious time of approaching menstruation: and if love could have assisted conception, no less could it foster conception from Antonius rather than from Aniellus, since on account of love many vital forces rally at the genitals, and thus make the semen fruitful more easily, apart from the fact that there is greater force in ejaculation and greater thrust into the woman's womb, all factors which not only make for an easy conception, but also, if there were any strong impediments on the part of Antonius, they could have completely removed them.

**8.** In fact, the answer is that love, whose fervour is said to facilitate conception, must be mutual and reciprocal between the spouses: it is not enough for only one to burn with love; indeed, when only one spouse loves and the other not only has no love, but feels hatred for the spouse, love does nothing to promote conception, for the hatred of one spouse is a far greater impediment to conception than the love of the other favours

conception, since hatred is always more suited for destruction than for creation. So in our case, although Antonius burned with love for Hieronyma, for her part she hated him, and unwilling intercourse, especially on the part of the woman, is barren, *Aer. libr. ultim. sua Medic. cap. 20., Roderic. a Castr, de nat. mul. libro 3. cap. 4.*

Nor could it be any advantage to Antonius, as is said, that he had intercourse with Hieronyma when her menstrual flows were approaching, although conception occurs more easily at the time when menstruation is beginning or when it is ending, when very many women do conceive, *Gal. in libell. de diffect. vulvae*, since it does not happen in this way consistently at any time and to anyone, but only to some: on the contrary, I say that in very many women conception takes place when menstruation is ending, as experience teaches, and Hippocrates himself [said], *in lib. de Nat. Puer. num. 7, and also Aristotle lib. 7 de Histor. Anim, cap. 2, and also libro 4. de Gener. Anim. cap. 4., Mercat. libro primo, de comm. mul. affect. cap. 3. and lib. 3 de Steril., and Prägen. aff. cap. 6, and Joan. Hucher de steril. Ruhr. 1.* In some women, especially those whose wombs are too dry, conception sometime occurs when the menstrual flows are beginning or not yet ending, because the moisture of the flows mitigates their natural aridity; this can also occur when the man has excessively hot and dry semen, for the intense heat and dryness of the male semen is emended by the moisture of the wombs in the same way. In fact, in our case, there is no reason to suggest that Antonius was turgid with exceptionally hot and dry semen, since his nature was very frigid, and he lived the life of an invalid, so thus it is supposed, for these reasons, that he could only provide very humid and cold semen, which far from being mitigated by the moisture of Hieronyma's womb so that it was more receptive to conception, on the contrary

rendered her womb completely unfit for conception. But what was said concerning love, that it can render conception easier, is indeed true if we speak of a man who is healthy and robust, but what could love have achieved in a man with a sickly and weak nature?

9. Even less can another fact which was previously determined be offered in opposition, that is the fact that Hieronyma, after she had first been known by Antonius, began to menstruate, and after their union, or not long after, her menstrual flows ceased, which is considered a clear sign of conception, and it is an even more evident confirmation of conception that, afterwards, when her menstrual flows approached in the following month, these flows did not occur, but only few drops of blood appeared, which are usually signs that conception has taken place, and not an injury, as is noted: *Joan. Hucher. de Sterilit. libr. 3. rubr. de concept. legit. signis*, since nature is accustomed to menstrual purging each month and, recalling its cleansing, is accustomed to attempt it in some way, that it may give satisfaction with its accustomed gift, especially since in the first month, (sometimes even in the second or third month), the blood overflows as it is giving nourishment to the foetus which has been conceived.

Nevertheless, with these arguments to the contrary put forward, the failure of the menstrual flows ( if indeed there were menstrual flows), can easily be explained: first, after the consummation of the marriage with Antonius, menstruation ceased not because conception had taken place, but either because of the grief and anguish of spirit admitted by Hieronyma, and which is accustomed to occur in almost all women while the menstrual blood flows, if they are perturbed by some strong passion of the spirit, such as they experience daily, and we doctors discover from them when we

investigate the causes of the failure of menstrual flows. Therefore, the flows were not suppressed because of intercourse with the husband, for intercourse exercised when the menstrual flows are waning is accustomed to encourage the menstrual flows, rather than otherwise: *Galen. lib. 1. de sant. tuend. cap. 9*; for the little mouths of the veins are easily opened by friction, and thus the menstrual blood flows.

Or perhaps the menstrual flows could have been suppressed by her coitus with Antonius, but not because conception had taken place, but because of some movement aroused in her womb, which strongly drew itself back to avoid the reception of semen; moreover, she was not able to conceive because she felt no pleasure in intercourse with him, and therefore it is very likely that she did not emit semen, and so there was no way conception could have taken place, for conception (as I have already said many times and as everywhere all doctors of these matters teach, much more than the Peripatetics or any other learned philosophers) requires the semen of both spouses, poured out together and at the same time: rather it should be believed that Hieronyma delayed rather than hastened their sexual union because of her aversion for Antonius.

But nor does what was reported in public about the appearance of the menstrual flows a month after her intercourse with Antonius argue more for Antonius than for Aniellus, since such a sign of conception may not have a fixed time for its appearance, for it often appears the day after conception has occurred, or sometimes in the first or second month: but the new effusion of blood after coitus with Aniellus seems to refute this, whatever is posited to the contrary, since it demonstrated very clearly that Hieronyma had not been purged by preceding menstrual flows, perhaps because they appeared late. Thus, on the occasion of her new intercourse with Aniellus, nature

attempted to purge her completely, which would not have happened when Hieronyma was already pregnant by Antonius, apart from the fact that the menstrual flows would not have appeared drop by drop a second time, as they did, but when, after several days from her intercourse with Antonius, they appeared on the occasion of her new intercourse with Aniellus, they did not appear immediately, but rather they delayed their discharge for a longer time .

Moreover, before all else which can be observed in this case, it seems one must observe the facts which pertain to the number of days of the gestation of the foetus, which, when we wish to calculate from the first sexual union of Antonius and Hieronyma, will be two hundred and seventy three days, certainly nine solar months, with three days added on, and if we use lunar months, there will be almost ten full months; when we count from her first sexual intercourse with Aniellus, the number will be two hundred and sixty two days, not nine complete solar months, since eight days are lacking; but if we use lunar months, there will be nine complete months, with only one or two days added; therefore, it would seem very likely that Hieronyma was pregnant for nine complete months not less.

**10.** And although it can be objected that it would not be very likely that this foetus, so vigorous and lively, delayed birth by three days beyond nine months, for this delay argues rather a weakness of nature, for certainly females are born later than males, as I said elsewhere *libro 1 quaest. tit. 2 .quaest. 5. num. 3.*, on the authority of Aristotle, yet this is not a hard and fast rule, since even the strongest foetuses sometimes delay their birth and are born in the tenth month, as they say of Hercules, the strongest of men, and Caesar Augustus and Solomon, as I noted elsewhere *loco cit. quaest. the same*,

*num. 18 and following*; therefore, it is not inconsistent that this foetus, on account of a delay of his birth, could have been conceived from Antonius,

**11 and 12** But against this conclusion surely it seems much more likely that this child was received from Aniellus: in the first place because children who are very robust hasten the birth, as was said above, because it happens according to the most powerful and fecund order of nature: and in so much it is true that seven month babies are only born in the seventh month because of their strength, and they hasten their birth by two months, for, on account of this strength, which they experience first in the seventh month, they move themselves strongly, break off the ligaments which attach them to the uterus, and come forth into the light before others; thus *Hippocrates in lib. de sept. part. num. 1, Alex. lib. 2, problem 48., Avic. 21.3 tract. 2. cap. 1.* This, it seems, also happens according to reason, since stronger babies consume the nourishment supplied in the mother more quickly, and on account of their more vigorous heat need more unencumbered air much sooner: on account of his strength, therefore, it must be assumed that this foetus was born before nine months had been completed, rather than later by several days, and thus was conceived from Aniellus, rather than from Antonius.

**13.** Furthermore, it is very likely, therefore, that the time of birth of the boy, if we are to say that he was conceived from Aniellus, rightly coincides with the time when Hieronyma usually menstruated: for it happens according to nature that women most often give birth at the time they are accustomed to menstruate, which in younger women is usually at the new moon or a little after, and in women more advanced in age at the time of the waning moon. But Hieronyma gave birth at the new moon, the usual

time of her menstrual purging; therefore, this new moon was the beginning of the tenth month, according to the lunar months and for computing conception or the pregnancy made by Aniellus from intercourse with Hieronyma; for her intercourse with Antonius had taken place five or six days earlier, which were the last days of the preceding month when the moon was waning, a time which in no way coincides with the time when Hieronyma usually menstruated; for younger women menstruate with the waxing moon, older women when the moon wanes, as thus:

*Luna vetus veteres, juvenes nova Luna repurgat.*

[The old moon purges the old, the new moon the young.].

And thus it does not seem that the boy could have been conceived from intercourse with Antonius, but rightly from the intercourse with Aniellus which followed.